

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
2015.03.09 10:28
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CRM No. M-40935 of 2013 (O/M)
Date of decision : 24.2.2015

Piara Singh and Zorawar Singh Petitioners

Versus

State of Punjab and another Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Bipan Ghai, Senior Advocate, with,
Mr. R.S. Virk, Advocate, for the petitioners.

Mr. Ashish Sanghi, Deputy A.G., Punjab.

Mr. Chanchal K. Singla, Advocate, for respondent No. 2.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J.

Piara Singh and Zorawar Singh, now aged about 68 and 64 years respectively, who happen to be Non-Resident Indians (NRIs), have filed this petition under Section 482 Cr.P.C. for quashing of Criminal Complaint No. 152 dated 8.6.2012, titled as Harmander Singh Versus Zorawar Singh and another, pending in the Court of the learned Judicial Magistrate 1st Class, Ludhiana, alongwith summoning order dated 23.7.2012 (Annexure-P-2), passed by the learned Judicial Magistrate 1st Class, Ludhiana, alongwith all the consequential proceedings.

Brief facts of the case are that Harmander Singh (respondent No. 2 herein) had filed a criminal complaint No. 152 dated 8.6.2012 titled as Harmander Singh Versus Zorawar Singh and another, under Sections 427/447/506 read with Section 34 IPC, Police Station PAU, Ludhiana, (Annexure-P-1), wherein he had stated that he alongwith his elder uncles, namely, Manmohan Singh and Hardev Singh are owners in possession of land bearing khasra Nos. 61, 62 and 71 in village Barewal Awana, Tehsil and District Ludhiana, which measure 57 kanals. In khasra No. 71, he has installed an electric motor. It was further alleged that he has been in possession of the said land after partition between the brothers for the last more than 30 years. Thereafter, he claimed that he has grown poplar trees on the boundaries of the land for the last more than 15 years. After maturity, they were uprooted and new 200 poplar trees were planted in March, 2012. It was alleged in the said complaint that on 16.3.2012, at about 6:00 PM, when he was irrigating his land, the accused persons alongwith two other persons came in white Bolero Mahindra jeep and started uprooting his poplar trees. They also threatened the complainant to take the possession of the said land illegally and forcibly and to teach him a lesson. It is stated that 15/20 poplar trees were uprooted by the accused persons. Therefore, the present complaint was filed on 5.6.2012 by the complainant (respondent No. 2 herein) before the learned Illaqa Judicial Magistrate, Ludhiana.

After recording the preliminary evidence, the learned Judicial Magistrate 1st Class, Ludhiana, summoned the accused, vide order dated 23.7.2012 (Annexure-P-2) to face trial for offences punishable under Sections 427/447/506 read with Section 34 IPC.

I have heard the learned counsel for the parties and have also carefully gone through the file.

The examination of the revenue record and the other documents placed on file show that the present complaint is nothing, but misuse of process of Court. A perusal of Jamabandi for the year 2006-07 (Annexure-P-3) shows that the present petitioners Zorawar Singh and Piara Singh are the co-sharers in the land bearing khasra Nos. 61, 62 and 71 alongwith Satwant Singh, father of the complainant Harmander Singh (respondent No. 2 herein). All the co-sharers are recorded to be in the joint possession of the land. Manmohan Singh and Harmander Singh are also recorded as co-sharers alongwith several others. The complainant (respondent No. 2 herein) concealed this fact in the said complaint that the accused (petitioners herein) are also co-sharers in joint possession of the land. He claimed that the partition had taken place between the brother 30 years back. However, it was not stated whether the said partition was oral or in writing. However, a perusal of petition filed in the year 2012 under Section 111 of the Punjab Land Revenue Act for partition of the joint share, titled as Zorawar Singh and others Versus Hardev Singh and others, (Annexure-P-5), shows that the

present petitioners alongwith two others have filed an application for partition of land before the revenue authorities.

The learned senior counsel for the petitioners claims that this application was filed prior to the filing of the present complaint. Not only this, a copy of the Civil Suit titled as Zorawar Singh and Piara Singh Versus Hardev Singh and others (Annexure-P-4) shows that Zorawar Singh and Piara Singh had filed a civil suit against the present complainant Harmander Singh (respondent No. 2 herein) and six others seeking permanent injunction for restraining them from alienating specific khasra numbers of the joint land or raising any construction claiming that the suit property is joint. The khasra number mentioned in the complaint is part of the land mentioned in the civil suit. The said civil suit was also filed on 1.5.2011 i.e. before the filing of the present complaint.

The learned senior counsel for the petitioners has also drawn the attention of this Court towards the order dated 21.12.2012 (Annexure-P-10), wherein Zorawar Singh had submitted a complaint to the Additional Deputy Commissioner, Zone-3, Ludhiana, that he is residing in USA and having 15 acres of land in village Barewal Awana, which is joint. It was alleged against Harmander Singh and his brother that they are the share holders. A case for partition of the land has been filed in Civil Court and that in order to put pressure, a false rapat No. 26, dated 16.5.2012 has been registered against them at Police Station PAU. After inquiring, the Additional

Deputy Commissioner, Zone-3, Ludhiana, found that there was no truth in the said DDR.

On the other hand, the learned counsel for respondent No. 2 has stated that as per the khasra girdawari book for the year 2012-13 (Annexure-R-2/4), Harmander Singh son of late Shri Stawant Singh is in self cultivation of the said land. Learned counsel for respondent No. 2 was asked as to when the land was recorded to be joint and was in self cultivation, as per the previous Jamabandi, then how he got the exclusive possession of the land ?

Admittedly, the partition proceedings are being contested. Therefore, a stray entry in the copy of the khasra girdawari is liable to be discarded. The net result is that the parties are still recorded to be co-sharers in the revenue record. The litigation between the parties for partition of land is pending before the revenue authorities and civil suit for permanent injunction is also pending before the learned Judicial Magistrate 1st Class, Ludhiana. The complainant (respondent No. 2 herein) had concealed all these facts and claimed that he is in possession of land on account of partition between the brothers. He has even not disclosed that the accused (present petitioners) are co-sharers in the said land. It appears that the present petitioners, who are NRIs, have been tried to be involved in a criminal case, so as to get advantage over them and to make them submit to the dictates of the complainant (respondent No. 2 herein). In this way, the present complaint is

nothing, but misuse of process of Court. Accordingly, Criminal Complaint No. 152 dated 8.6.2012, titled as Harmander Singh Versus Zorawar Singh and another, (Annexure-P-1), filed by respondent No. 2 and summoning order dated 23.7.2012 (Annexure-P-2), passed by the learned Judicial Magistrate 1st Class, Ludhiana, alongwith all the consequential proceedings are quashed.

Hence, the present petition is allowed.

(KULDIP SINGH)
JUDGE

24.2.2015
sjks